



C.M.P.Nos.1843 and 1844 of 2024

in
S.A.No.455 of 2013

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V.LAKSHMINARAYANAN, J.

The suit was originally filed for a declaration that the “WILL” executed by mother of the petitioner and the respondents on 30.11.2002 is true and genuine and for directing the plaintiff / petitioner herein to be put in possession of the property. By an order dated 19.01.2024, I had asked the learned counsel as to how he is maintaining the suit as the appropriate relief should have been one for partition after impleading all the parties and the properties involved in the matter.

2. In response, Mr.A.Muthukumar has moved these applications to implead the co-sharers, namely the sisters and seeks for amendment of the plaint into one for partition based on the “WILL” executed by the mother on 30.11.2002 or in the alternative for general partition.

3. Such an application if allowed at the second appellate stage, would alter not only the cause of action but also very frame of the suit. The second Appellate Court has the jurisdiction and the power to allow an application for amendment. However, it is based on settled principles of law that the cause of action must not change, the frame of the suit must not change nor should the amendment be barred by limitation.



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4. Being sharers in the property left behind by Kannaiyan, the father, the cause of action for partition arises day-to-day and therefore, there is no question of any aspect on limitation. However, if I allow the amendment application, it will change the frame of the suit. Therefore, C.M.P.No.1843 of 2024 to amend the plaint is dismissed. Consequently, C.M.P.No.1844 of 2024 is also dismissed.

30.01.2024

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